Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1355

SCOTTY'S HOME BUILDERS
and
GENERAL INSURANCE COMPANY
OF AMERICA,
Petitioners,

v.

MATTHEW P. CUNNINGHAM
and
THE INDUSTRIAL RELATIONS
COMMISSION,
Respondents.

REPLY BRIEF FOR PETITIONERS

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CITATION OF AUTHORITIES

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ARGUMENT

Respondents' argument that Florida's new Administrative Procedure Act is not applicable is clearly without merit. A very basic tenet of Appellate review is that the law existing at the time of the Appeal is applicable. *Ziffrin, Inc.* v. *United States*, 318 US 73, 63 S.Ct. 465. Hence, Florida's Administrative Procedure Act is controlling in the present case.

The unconstitutionality of the Florida Supreme Court's holding that judicial review by certiorari of decisions of the Industrial Relations Commission is not a matter of right is compounded by the existence of three other Florida decisions:

1. *G & H Contracting Co.* v. *Hale*, IRC Decision 2-2688, filed August 21, 1974, held that a claimant has no *right* to file a claim for compensation, in the sense that he will be penalized for filing a claim where he is being paid temporary total disability benefits, where all medicals are being provided and where there is no dispute between the parties.

2. *Millis* v. *McCann Hardware* (Fla.1972) 278 So.2d 278 discloses that Florida Appellate Rule 3.10(e) which allows an appellate court to dispense with oral argument is applicable to workmen's compensation cases. Therefore, if an appeal is taken to the Industrial Relations Commission from a decision of a Judge of Industrial Claims, the case can be decided by the Commission without ever having heard oral argument by the parties. Thereafter, even if the Florida Supreme Court does review an appeal from the decision of the Industrial Relations Commission on the merits, it can again do so and affirm, reverse or whatever without permitting the parties to orally argue the case. Thus, the entire appellate process can be completed without having given the parties an opportunity to ever appear and orally argue the case.

3. *Lehman* v. *Goodwin*, IRC Decision 2-2090, filed August 17, 1972, held that an interlocutory order of the Judge of Industrial Claims is not subject to appeal. However, there is no provision made for preserving any objection a party might have to an interlocutory order.

In light of the above cases, the *Scholastic Systems, Inc.* v. *Leloup* decision (Fla.1975) 307 So.2d 166 becomes much more harsh than would appear at first blush. It can be seen that already a claimant: (1) has no right to file a workmen's compensation claim without being able to show that particular circumstances exist; (2) thereafter, neither party can appeal an interlocutory order of the Judge of Industrial Claims although there is no provision for preserving objection to the order; and (3) even when an appeal from a final order is heard by the Industrial Relations Commission and thereafter the Florida Supreme Court, oral argument can be denied at either level. Now, pursuant to *Leloup* there is no *right* to judicial review by the Florida Supreme Court at all.

It is evident that the *Leloup* decision becomes much more restrictive in light of the above decisions. Accordingly, the right to any kind of review, administrative or judicial, of a workmen's compensation case in Florida is virtually nonexistant.

CONCLUSION

For reasons stated here and in the petition, the petition should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Dudley Burton, P. O. Box 213, Sanibel, Florida, 33957, Attorney for Respondent Cunningham, and Mrs. Verna Martin, Industrial Relations Commission, Ashley Building, 1321 Executive Center Drive, Tallahassee, Florida, 32301, by mail, this.....day of....., 1975.

By.....
EDNA L. CARUSO